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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 43612
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-106
)	
DESIREE ROSE GARNER,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE STEVEN J. HIPPLER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Desiree Rose Garner appeals from the judgment of conviction entered upon her guilty plea to possession of a controlled substance. Garner contends the district court abused its discretion by denying her motion to withdraw her guilty plea.

Statement Of Facts And Course Of Proceedings

The state charged Garner with possession of a controlled substance. (R., pp.9-10, 32-33, 38-39.) Pursuant to a plea agreement, Garner pled guilty to the charged offense, and the state agreed to recommend probation with an underlying sentence of seven years, with two years fixed. (3/17/2015 Tr., p.5, Ls.8-12, p.18, Ls.12-14; see also R., pp.49-56 (guilty plea advisory form).)

Prior to sentencing, Garner filed a motion to withdraw her guilty plea. (R., p.85.) Garner submitted an affidavit in support of her motion, which included assertions that she has “learning, cognitive and understanding disabilities,” and that the guilty plea form she completed “had numerous questions that [her] family members could not help [her] resolve.” (R., p.88.) Garner also claimed she told her public defender she understood the form “out of embarrassment and intimidation” and that she “entered the guilty plea when [she] should have spent more time going over the form, discovery and the events surrounding [her] arrest.” (R., p.88.) The court held a hearing on Garner’s motion at which it advised Garner to submit additional information regarding the legal and factual bases of her request. (4/27/2015 Tr., p.9, L.17 – p.10, L.16.)

Garner submitted a second motion to withdraw her guilty plea. (R., pp.92-98.) In her second motion, Garner argued that she had “questions” about the guilty plea form, she felt “overwhelmed,” she has a “learning disability” and difficulties with “comprehension,” and she “was very stressed at the time of her plea” because she had failed “several pretrial urinalysis tests.” (R., p.95.) As a result, Garner contended her guilty plea was not knowing and intelligent. (R., p.95.)

The court held a second hearing on Garner’s request to withdraw her guilty plea at which Garner testified in support of her motion. (See generally 5/20/2015 Tr.) Garner’s public defender, who represented her at the time of her guilty plea, also testified. (5/20/2015 Tr., pp.57-81.) At the conclusion of the hearing, the court made factual findings and denied Garner’s motion to withdraw her guilty plea. (5/20/2015 Tr., p.103, L.20 – p.108, L.2; see also R., pp.121-122.)

The court imposed a unified five-year sentence, with one and one-half years fixed, but suspended the sentence and placed Garner on probation. (R., pp.138-142.) Garner filed a timely notice of appeal. (R., pp.160-162.)

ISSUE

Garner states the issue on appeal as:

Did the district court abuse its discretion by denying Ms. Garner's motion to withdraw her guilty plea?

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Because Garner did not show her guilty plea was constitutionally invalid or that there was a just reason to withdraw her plea, has Garner failed to meet her burden of showing the district court erred in denying her motion to withdraw her guilty plea?

ARGUMENT

Because Garner Failed To Show There Was Any Basis To Withdraw Her Guilty Plea, Garner Has Failed To Show The District Court Erred In Denying Her Motion

A. Introduction

Garner argues that the district court abused its discretion in denying her motion to withdraw her guilty plea because, she claims, “[h]er plea was not knowing, intelligent, and voluntary, and she provided just reasons to withdraw her plea.” (Appellant’s Brief, p.6.) Garner further argues, “the State did not show prejudice.” (Appellant’s Brief, p.6.) Application of the law to the record and the facts found by the district court supports the district court’s determination that Garner failed to show she was entitled to withdraw her guilty plea.

B. Standard Of Review

“Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action.” State v. Hanslovan, 147 Idaho 530, 535-536, 211 P.3d 775, 780-781 (Ct. App. 2008) (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)). An appellate court will defer to the trial court’s factual findings if they are supported by substantial competent evidence. State v. Holland, 135 Idaho 159, 15 P.3d 1167 (2000); Gabourie v. State, 125 Idaho 254, 869 P.2d 571 (Ct. App. 1994).

C. Garner Has Failed To Show The District Court Abused Its Discretion In Denying Her Motion To Withdraw Her Guilty Plea

A motion to withdraw a guilty plea is governed by I.C.R. 33(c), which provides:

(c) Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw defendant's plea.

Although a district court's discretion should be "liberally exercised" when ruling on a motion to withdraw a guilty plea made prior to the pronouncement of sentence, withdrawal of a guilty plea is not an automatic right. State v. Hanslovan, 147 Idaho 530, 535, 211 P.3d 775, 780 (Ct. App. 2008). Rather, "the defendant has the burden of showing a 'just reason' exists to withdraw the plea." Hanslovan, 147 Idaho at 535, 211 P.3d at 780 (citations omitted). Failure to present and support a just or plausible reason, even absent prejudice to the prosecution, will weigh against granting withdrawal. State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004). "[T]he good faith, credibility, and weight of the defendant's assertions in support of h[er] motion to withdraw h[er] plea are matters for the trial court to decide." Hanslovan, 147 Idaho at 537, 211 P.3d at 782 (citations omitted).

"The first step in analyzing a motion to withdraw a guilty plea is to determine whether the plea was knowingly, intelligently, and voluntarily made." Hanslovan, 147 Idaho at 536, 211 P.3d at 781 (citing State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990)). This step involves a three-part inquiry: (1) whether Garner understood the nature of the charges and whether she was coerced; (2) whether Garner "knowingly and intelligently waived [her] rights to a jury

trial, to confront [her] accusers, and to refrain from incriminating [her]self,” and (3) whether Garner understood the consequences of her guilty plea. State v. Anderson, 156 Idaho 230, 234, 322 P.3d 312, 316 (Ct. App. 2014) (citations omitted). “On appeal, Idaho law requires that voluntariness of the guilty plea and waiver must be reasonably inferred from the record as a whole.” Id.

In denying Garner’s motion to withdraw her guilty plea, the district court found that Garner failed to show there was a “constitutional defect” in Garner’s guilty plea and found “the guilty plea was given freely and voluntarily and was intelligently made.” (5/20/2015 Tr., p.104, Ls.18-21.) A review of Garner’s guilty plea colloquy and the record supports this finding.

Prior to pleading guilty, Garner completed a written “Guilty Plea Advisory and Form.” (R., pp.49-56 (form); 3/17/2015 Tr., p.16, L.21 – p.17, L.5 (Garner acknowledging completing the form).) That form reflects that Garner understood the nature of the charges, that she was pleading guilty freely and voluntarily, that she was aware of her constitutional rights and was waiving them as a result of her guilty plea, and that she was aware of the consequences of her guilty plea. (R., pp.49-56.) The district court confirmed each of these points prior to accepting Garner’s guilty plea as reflected in the following excerpts from Garner’s plea colloquy:

Q. Do you understand the nature of the charge against you and the possible penalties which may be imposed as a direct consequence of your guilty plea?

A. Yes, sir.

Q. Do you understand that there are other indirect consequences to you as a result of a felony conviction?

A. Yes, your Honor.

. . .

Q. And do you understand if you are a United States citizen, upon conviction of this felony, you'll lose the following civil rights: The loss of the right to possess, purchase or carry a firearm, serve on jury duty, hold public office and vote?

A. Yes, your Honor.

Q. Do you understand felonies on your record may lead to persistent violator charges and increased penalties in the future should you plead guilty or be found guilty of committing additional felonies?

A. Yes, your Honor.

(3/17/2015 Tr., p.9, L.19 – p.10, L.21.)

Q. Has anyone threatened you or anyone close to you to get you to plead guilty?

A. No.

Q. Has anyone told you not to be truthful in answers [sic] my questions today?

A. No.

Q. Has anyone offered you a reward of any kind to get you to plead guilty?

A. No.

(3/17/2015 Tr., p.11, Ls.13-21.)

Q. And are you pleading guilty freely and voluntarily?

A. Yes.

(3/17/2015 Tr., p.13, L.25 – p.14, L.2.)

Q. Do you understand by pleading guilty you're giving up certain important constitutional rights, including your right to a speedy and public trial by jury?

A. Yes.

Q. Do you understand you're giving up your presumption of innocence and your right to require the state to prove your guilt as to each element of the charge beyond a reasonable doubt?

A. Yes.

Q. Do you also understand you're giving up your right to confront your accusers and cross-examine them, as well as your right to compel evidence and witnesses into court in your own defense?

A. Yes.

Q. And finally you understand you're giving up your privilege against self-incrimination and your right to remain silent, which as part of the terms of your plea agreement may include a waiver of any right you have to refuse to participate in a [sic] alcohol or drug evaluation, mental health evaluation or other evaluation I determine is necessary to assist me in sentencing, as well as the right to refuse to participate in treatment if those evaluations indicate treatment is necessary?

A. Yes.

(3/17/2015 Tr., p.15, L.2 – p.16, L.1.)

Although Garner claimed that she was “confused” when she was completing the guilty plea form, she could not identify any specific questions on the form that she found confusing. (5/20/2015 Tr., p.36, L.22 – p.37, L.4.) Similarly, although Garner testified she was untruthful in her responses on the guilty plea form, she failed to identify which responses were false. (5/20/2015 Tr., p.49, Ls.19-21.) Garner also testified that she lied during her plea colloquy, but no specific lie was identified in relation to the constitutional requirements for her plea. (5/20/2015 Tr., p.51, L.9 – p.55, L.4.) Rather, Garner’s supposed lies to the court revolved around her alleged disabilities, her general understanding of the guilty plea form, and whether she was satisfied with counsel. (5/20/2015 Tr., p.51, L.9 – p.53, L.19.) As noted by the district court, although Garner “generally stated she did not understand

things and that she was anxious and she was confused,” the evidence was “lacking” on what exactly Garner was confused about. (5/20/2015 Tr., p.106, Ls.5-8.)

In short, nothing in the record supports a finding that the district court erred in concluding that Garner failed to meet her burden of proving that her guilty plea was constitutionally defective. Garner does not advance any real argument on appeal showing otherwise. Instead, Garner references her testimony that she “has a difficult time with comprehension, and felt confused, overwhelmed, and pressured at the plea hearing,” as well as her testimony that she “did not have enough time with her attorney and did not review documents she believed were important to her case,” and then argues, in conclusory fashion, that “[h]er plea was not knowing, intelligent, and voluntary.” (Appellant’s Brief, pp.5-6.) This “argument” falls far short of demonstrating any error in the district court’s finding that Garner’s guilty plea satisfied constitutional standards.

Garner has also failed to show any non-constitutional basis for withdrawing her guilty plea. “If the plea is constitutionally valid, the court must then determine whether there are any other just reasons for withdrawal of the plea.” Hanslován, 147 Idaho at 536, 211 P.3d at 781 (citing State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990)). Addressing the just reason standard, the district court found none. (5/20/2015 Tr., p.107, Ls.6-8.) Aside from citing her confusion and anxiety as reasons for withdrawing her guilty plea, Garner also suggested that she was entitled to withdraw her plea because she could theoretically defend against the possession charge by claiming the methamphetamine did not belong to her even though she admitted to law enforcement, prior to her arrest, that

there was methamphetamine in her purse. (5/20/2015 Tr., p.27, L.2 – p.29, L.16.) In response to this claim, Garner’s public defender testified that Garner never told her the methamphetamine belonged to someone else and, in any event, such a defense would not be particularly compelling given Garner’s admissions to law enforcement and the fact that “under the law two people can possess a controlled substance,” which she explained to Garner. (5/20/2015 Tr., p.65, L.25 – p.66, L.6, p.76, Ls.19-21.) The district court correctly concluded that Garner’s theoretical defense, which was contrary to her admissions to law enforcement and under oath, was not a just reason for withdrawing her guilty plea. (5/20/2015 Tr., p.107, L.6 – p.108, L.2.)

On appeal, Garner’s argument with respect to the “just reason” standard is the same as her “argument” on the constitutional standard. (Appellant’s Brief, p.6.) Although the “just reason” standard may be lower than the constitutional standard, Garner’s “argument” is equally unpersuasive for both. Garner’s claimed confusion and anxiety, and her after-the-fact claim that she was not satisfied with her attorney did not individually, or collectively, constitute a just reason to withdraw her guilty plea, particularly since these post-guilty plea assertions were directly contrary to her sworn statements at the time of her guilty plea and did not elucidate anything relevant that Garner supposedly did not comprehend at the time of her guilty plea. See State v. Wyatt, 131 Idaho 95, 98, 952 P.2d 910, 913 (Ct. App. 1998) (finding no just cause for withdrawal where defendant’s sworn testimony contradicts his

statements in support of withdrawal).¹

Garner has failed to meet her burden of showing the district erred in denying her motion to withdraw her guilty plea.

CONCLUSION

The state respectfully requests this Court affirm Garner's judgment of conviction for possession of a controlled substance.

DATED this 29th day of August, 2016.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

¹ On appeal, Garner also argues that "the State did not show prejudice." (Appellant's Brief, p.6.) Because Garner did not show her guilty plea was constitutionally infirm, or that there was a just reason for withdrawal of her plea, the state was not required to demonstrate prejudice. State v. Hartsock, 2016 WL 3361878 *2, --- P.3d --- (Idaho App. 2016) (citations omitted) ("The defendant's failure to present and support a plausible reason will dictate against granting withdrawal, even absent prejudice to the prosecution.").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of August, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

JML/dd